

Moultonborough Zoning Board of Adjustment
P.O. Box 139
Moultonborough, NH 03254

Regular Meeting

September 7, 2016

Minutes

Present: Members: Bob Stephens, Ken Bickford, Bob Zewski, Robert St. Peter
 Alternates: Nick DeMeo, Richard Jenny
Excused: Member: Russ Nolin
 Alternate: Paul Onthank, Jerry Hopkins
Staff Present: Administrative Assistant, Bonnie Whitney

I. Call to Order

Chairman Stephens called the meeting to order at 7:00 PM and led the Pledge of Allegiance. He then introduced the members of the board to the public. He appointed Richard Jenny to sit on the board with full voting privileges for Public Hearing #1, and Nick DeMeo to sit on the board with full voting privileges for Public Hearing #2, all in place of missing member Russ Nolin.

II. Pledge of Allegiance

III. Approval of Minutes

Motion: Mr. Zewski moved to approve the Zoning Board of Adjustment Minutes of August 17th, 2016, as written, seconded by Mr. St. Peter, carried unanimously.

IV. Hearings

1. Continued Public Hearing for Kevin P. Gallo, Trustee (128-25) (10 Olympia Street)
 Variance from Article III.B. 1

Chairman Stephens stated that this was a continued hearing which was properly noticed at the Public Hearing on August 3rd. At that time the Board had concerns and had requested additional information from the agent and continued the hearing. Neither the applicant nor his agent was present this evening. The Chairman stated that the Board had two options this evening. One, to continue the hearing again, to a date specific, or dismiss the application, without prejudice, and if the applicant wishes to come back in again, they will have to refile and incur the costs associated with a new application. There has been no communication from the applicant since the meeting on August 3rd.

Members discussed the fees associated with continuing or dismissing the hearing. The members briefly reviewed the issues from the prior hearing. It was noted that they were in receipt of a letter from an abutter who was opposing the project, as well as a letter recently submitted by Property Owners Association as Suissevale opposing the project.

Rich Kumpf, 92 Randall Road was present representing the abutters located at 7 Joanna Street (Lot 26). Mr. Kumpf provided the members with additional information, one which showed three different properties owned by Mr. Gallo. He feels that there are other options that are available on other

properties Mr. Gallo owns in Suissevale. In reference to “other properties” the Chair commented that the Board must deal with the application before them on 10 Olympia Street.

The Chair asked the pleasure of the Board. It was the consensus of the Board as this was a properly continued Public Hearing, and there was no one present to present the additional information requested at the first hearing that they would dismiss the application without prejudice.

Voting members were Bob S., Ken, Bob Z., Rob and Richard.

Motion: Mr. Zewski moved dismiss the application, without prejudice, for Gallo Retirement Realty Trust; Kevin P. Gallo, Trustee, 10 Olympia Street, (128-25), closing the public hearing and to direct staff to draft a formal Notice of Decision for Board discussion only, based on the Finding of Facts during tonight’s hearing, which will be reviewed for accuracy only and signed by the Chair at the next scheduled meeting, seconded by Mr. Bickford, motion passed, five (5) in favor (Stephens, Bickford, Zewski, St. Peter and Jenny) and none (0) opposed.

2. Continued Public Hearing for Jon & Wendy Clattenburg (235-9) (Solomon Drive)
Variance from Article III – General Provisions

Chairman Stephens stated that this is a continuation for a variance from Article III – General Provisions to allow for the construction of an accessory structure (20’ x 45’ storage shed / barn) on a property that currently has no primary structure. The Chair stated that the board had heard the application on August 17th and during the hearing there were a few issues and questions that were raised regarding hardship as well as if could they place a condition of approval on the variance with a sunset clause on the shed. A motion was made and approved to continue the hearing for the purpose of allowing time for the Chairman seek legal input from Town Counsel.

The Chairman noted that he had had a conversation with Counsel who indicated that the Board may put whatever conditions they feel are appropriate, up to and including a sunset clause, on a situation like this. Basically it is a horse and cart scenario, and the question being are you putting the horse or the cart first. In this case, the applicant is asking to put the cart first. If this is the direction the Board chooses to go, they must still reconcile the five criteria, more specifically the hardship criteria and how they define how they justify the hardship.

Jon & Wendy Clattenburg were present for the continued public hearing of their Variance. Mrs. Clattenburg stated that their building plans for the dwelling are mostly completed, 99%, they have engaged the services of Ames Associates for their septic, noting that Ames Associates were on site today doing field work. They reiterated their reasons for seeking the variance to construct the shed prior to the construction of the primary dwelling.

The Chair stated given the fact that the applicants do not want to apply for a building permit for the primary dwelling that will expire during the winter, and if the Board was inclined to grant an approval and place a sunset clause as a condition (stating that they must comply with this component by such and such a date, or you will have to remove said structure [shed]) would they be in agreement with this? The Chair tossed out a clause that would give them a year to secure a Building Permit for the Primary Structure, and then comply with the terms of the Building Permit which six (6) months to start. That realistically gives the applicant approximately sixteen or seventeen months. Chairman Stephens asked for input from the Board regarding the condition, noting they would still need to discuss the criteria and how they satisfy those requirements.

Members discussed the suggested sunset clause, noting that Counsel said they may place whatever conditions they wish to put on an approval. Counsel recognizes the challenge that the

applicants are defining (a place to put their stuff while they are in transition), he recognizes the ordinance doesn't allow for that, he recognizes that the applicant has indicated a commitment to put a primary structure on the property in the near future. If the applicant agrees to the clause that's the letter of the law.

A discussion ensued regarding what could happen if they did not meet the conditions of the sunset clause. This could go to court where they could be instructed to remove the shed. It was noted that any costs incurred for legal fees etcetera would be at the applicant's expense, and could be made a part of the condition of approval.

Mrs. Clattenburg stated that they would be agreeable to a sunset clause, and offered a bond for the project. Mr. Bickford asked if they would commit to obtaining a building permit for the primary dwelling within six (6) months, giving them a total of twelve (12) months. They were in agreement with these terms should the Board grant the approval.

The discussion continued briefly with members of the Board and the applicants in agreement with a potential sunset clause as discussed.

Mr. Stephens asked if there were any questions from the board at this time. It was noted that there were none. The board went into deliberative session to discuss each of the criteria for the granting of a variance at 7:30 PM and came out of deliberative session at 8:02 PM.

The terms of the sunset clause were that the Applicant has six (6) months to execute a Building Permit for a Primary Structure from September 8, 2016. The timing requirements for a Building Permit will be met as a condition of approval, giving a total of twelve (12) months, and that the cost of the removal of the structure should the Applicant fail to meet the conditions within twelve (12) months from September 8, 2016 (said bond will be released upon an approved framing inspection completed by the Code Enforcement Officer) will be at the expense of the applicant.

There was no further input from the Board or public. The voting members were Bob S., Ken, Bob Z., Rob and Nick.

Motion: Mr. Bickford moved to grant the request for a variance from Article III – General Provisions for Jon & Wendy Clattenburg, Tax map 235, Lot 9, subject to the following conditions; 1) The Applicant shall apply for a Building Permit for the Primary structure within six (6) months from September 8, 2016; 2) The Applicant will be liable for all of the Town's legal costs should any of the conditions of this approval not be met; 3) The Applicant shall provide a security bond in the amount of \$20,000 prior to obtaining a Building Permit for the storage shed / barn; 4) No extensions of the primary structure Building Permit will be granted by the Board or the Code Enforcement Officer (CEO); 5) The Bond will be released upon completion of an approved framing inspection of the primary structure by the CEO, and further to close the Public Hearing and to direct staff to draft a formal Notice of Decision for Board discussion only, based on the Finding of Facts during tonight's hearing, which will be reviewed for accuracy only and signed by the Chair at the next scheduled meeting, seconded by Mr. Zewski, motion passed, five (5) in favor (Stephens, Bickford, Zewski, St. Peter and DeMeo) and none (0) opposed.

Chairman Stephens noted the 30 day right to appeal in accordance with NH RSA 677:2 would begin tomorrow.

V. Correspondence

VI. Unfinished Business

1. Review and possible authorization for the Chair to sign the formal Notice of Decision for the August 17th, 2016 granting of a variance for Leon & Cheryl Haydon, for a parcel located on Winaukee Road (Tax Map 252, Lot 23).

The Board reviewed the draft Notice of Decision prepared by staff, as directed by the Board at the hearing on August 17th. There were no changes made to the draft.

Motion: Mr. Bickford moved to approve the formal Decision Letter as written for Leon & Cheryl Haydon, Tax Map 252, Lot 23 and to authorize the Chairman to sign and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. St. Peter, motion passed, five (5) in favor (Stephens, Bickford, Zewski, St. Peter, DeMeo), and none (0) opposed.

2. Review and possible authorization for the Chair to sign the formal Notice of Decision for the August 17th, 2016 granting of a variance for Joseph Fellini, for a parcel located at 12 Sunrise Drive (Tax Map 92, Lot 23.3).

The Board reviewed the draft Notice of Decision prepared by staff, as directed by the Board at the hearing on August 17th. There were no changes made to the draft.

Motion: Mr. Zewski moved to approve the formal Decision Letter as written for Joseph Fellini, Tax Map 92, Lot 23.3 and to authorize the Chairman to sign and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Bickford, motion passed, five (5) in favor (Stephens, Bickford, Zewski, St. Peter, DeMeo), and none (0) opposed.

3. The Chairman noted that at their prior meeting the Board had discussed Selectman Paul Punturieri's position regarding video streaming their meeting. At that meeting members had mixed feelings on this subject, and requested input from Counsel. The Chair indicated that Counsel seemed to have a less is better mentality when it comes to dealing with defending the Town in matters that go to court. Members gave input and concerns on the subject with the comments being that the benefits don't outweigh the cons at this time and that there is no upside to live streaming, but a potential down side. It was the general consensus of the Board that they were leaning away from video streaming the meetings at this time. A poll was taken: Rob – Nay; Ken – Nay; Bob Z. – Nay; Bob S. – Nay; Nick – Nay; Rich- Nay

VII. Adjournment

Motion: Mr. Bickford made the motion to adjourn at 8:27 PM, seconded by Mr. Zewski, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant